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Pages:	Cover + 1 + 6 = 8	Date:	July 10, 2007
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Attention: Commissioner for Patents **Attorney Docket No. PD-201129**

Please find attached Re:

Serial No.: 09/978,452 Filing Date: October 17, 2001

- TRANSMITTAL FORM PTO/SB/21 (1 page)
- REPLY BRIEF (6 pages)

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TRANSMITTAL FORM

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Total Number of Pages in This Submission	7

Application Number	09/978,452
Filing Date	October 17, 2001
First Named Inventor	Michael Ficco
Art Unit	2623
Examiner Name	CHOWDHURY, Sumaiya A.
Attorney Docket Number	PD-201129

ENCLOSURES *(Check all that apply)*

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- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Michael FICCO		
Application No.:	09/978,452	Group Art Unit:	2623
Filed:	October 17, 2001	Examiner:	Chowdhury, S.
Attorney Docket:	PD-201129		

For: METHOD, SYSTEM AND COMPUTER PROGRAM PRODUCT FOR AIRCRAFT MULTIMEDIA DISTRIBUTION

REPLY BRIEF

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed May 15, 2007.

I. STATUS OF THE CLAIMS

Claims 1-52 and 54-56 are pending and are on appeal. Claim 53 has been previously canceled without prejudice or disclaimer.

II. GROUNDS OF REJECTION TO BE REVIEWED

Whether claims 1-5, 7, 8, 11, 13-15, 27-31, 33, 34, 37, 39-41, and 54-56 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127)?

Whether claims 6 and 32 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *Humpleman* (US 5,579,308)?

Whether claims 9 and 35 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *Schwab* (US 6,353,699)?

Whether claims 10 and 36 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *Ahmad* (US 5,565,908)?

Whether claims 12 and 38 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *Rosin et al.* (US 6,028,600)?

Whether claims 16 and 42 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *McCarten et al.* (US 5,959,596)?

Whether claims 17 and 43 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913), *Wright et al.* (US 6,047,165), *Booth et al.* (US 5,835,127) and *McCarten et al.* (US 5,959,596) in view of *Ahmad* (US 5,565,908)?

Whether claims 18-21 and 44-47 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *Volpe et al.* (US 2001/0032028)?

Whether claims 22-24 and 48-50 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913) in view of *Wright et al.* (US 6,047,165) and *Booth et al.* (US 5,835,127) and further in view of *Neel et al.* (US 5,838,314)?

Whether claims 25, 26, 51, and 52 are obvious under 35 U.S.C. § 103 based on *Galipeau et al.* (US 6,249,913), *Wright et al.* (US 6,047,165), *Booth et al.* (US 5,835,127) and *Neel et al.* (US 5,838,314) in view of *Dedrick* (US 5,724,521)?

III. ARGUMENT

Appellant maintains the positions presented in the Appeal Brief filed January 9, 2007, but presents further refutation of the assertions presented in the Examiner's Answer.

Each of the independent claims on appeal requires, in one form or another, **pre-flight selection of the multimedia via a web** server. The Examiner maintains that this is taught by *Wright et al.*, but now contends that while the references do not specifically teach the instant disclosed invention, wherein the airline passenger selects the multimedia prior to the flight, the claims do not require the airline passenger to do the pre-selecting, and the selection by airline personnel prior to the flight in *Wright et al.* meets the claim language. Appellant disagrees.

Contrary to the Examiner's view that the claims do not require that the user do the selecting, the claims do specify that the passenger purchase the multimedia, which is immediately followed by the recitation of "the multimedia being selected pre-flight..." Accordingly, the only reasonable interpretation of the claims, as written, is that the passenger who purchases the multimedia is the person who selects that particular multimedia product. And, since the selection is explicitly required to be performed "pre-flight," it follows that the passenger is the one performing that selection.

The Examiner's interpretation of *Wright et al.* is flawed. The Examiner relies on column 7, lines 5-37, of *Wright et al.* for a teaching of uploading multimedia onto an aircraft via a web server while the aircraft is parked at the gate, and contends that this uploaded multimedia is "selected" by a designated personnel of the airline in preparation for the next flight or series of flights.

Initially, Appellant points out that the cited portion of *Wright et al.* mentions nothing about the actions of airline personnel being performed "pre-flight." That portion of the reference mentions data terminal equipment (DTE) that "collects and stores flight performance data generated on board the aircraft **during flight**" (emphasis added). In the very next sentence, it is mentioned that the DTE "also stores and distributes information uploaded to the aircraft via a ground sub-system's wireless router 201...which is coupled thereto by way of a local area network 207 from a base station segment 202 of a ground subsystem 200 **in preparation for the next flight or series of flights**" (emphasis added). Thus, the first sentence clearly dictates that certain data is collected **during flight**, and not "pre-flight," as required by the instant claims. The next sentence, directed to storing and distributing information **in preparation for the next flight or series of flights**, does not necessarily require any selection "pre-flight," as required by the instant claims, because the acts performed in preparation for the next flight or series of flights may very well be performed **during flight**. In fact, this would be the most reasonable explanation since the prior sentence mentions collecting and storing data **during flight** and there is nothing to suggest that the further storing and distributing of information is performed at any time other than **during flight**. Therefore, at best, it would be speculative to conclude that *Wright et al.* describes a system wherein a selection of multimedia is being performed **pre-flight**, as required by the instant claims. A conclusion of obviousness may not be based on speculation. *In*

re Freed, 425 F.2d 785, 787, 165 USPQ 570, 571 (CCPA 1970); In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

Moreover, even assuming, *arguendo*, that an action by airline personnel in *Wright et al.*, in downloading multimedia information to the aircraft, may be said to be performed "pre-flight" (an assumption with which Appellant disagrees), the instant claims reasonably require that it is the passenger, and not airline personnel, who purchases and selects the multimedia product(s) "pre-flight." The Examiner's rationale to the contrary is just unreasonable.

Further, while Appellant contends that all of the independent claims are patentable over the combination of *Galipeau et al.* and *Wright et al.*, the limitations of independent claim 55 even point out more so how the instant claimed invention distinguishes over the applied art. Claim 55 requires "selecting, pre-flight, one of the options for purchase of a corresponding one of the plurality of multimedia..." Thus, not only is the selection performed **pre-flight,** but also the selection is of an option for purchase. Since it is clear that the passenger is the one doing the purchasing, it is very clear that the passenger, and not some airline personnel, as alleged in *Wright et al.*, must be performing the selection pre-flight.

None of the other references, cited for various features of dependent claims, supply the deficiencies of *Galipeau et al.* and *Wright et al.*

Moreover, while Appellant stresses that, for the reasons explained *supra*, and in the principal Appeal Brief, he is entitled to the instant claims, as written, in view of the applied references, should the Honorable Board decide otherwise, it is respectfully requested that it exercise its authority under 37 CFR § 41.50(c) and explicitly state that an amendment to the independent claims 1, 27, and 54, adding "by the passenger" after "multimedia being selected pre-flight," and to independent claim 55, adding "by a passenger" after "selecting, pre-flight,"

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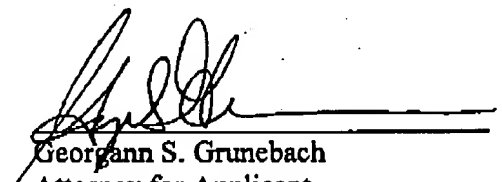
would overcome the Examiner's rejections. Such an action, should it become necessary, is deemed appropriate since the Examiner alleged in the Answer, for the first time, that the "claim doesn't require that the user per se does the selecting" (page 22-Answer).

IV. CONCLUSION AND PRAYER FOR RELIEF

The claims require an airline passenger to select, pre-flight, a multimedia for purchase but none of the applied references teaches or suggests this feature. Appellant, therefore, requests the Honorable Board to reverse each of the Examiner's rejections.

Respectfully submitted,



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